

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

IN RE:)
)
EASTERN LIVESTOCK CO., LLC,) Case No. 10-93904-BHL-11
)
Debtor.) Hon. Basil H. Lorch III

**TRUSTEE'S MOTION TO APPROVE COMPROMISE AND SETTLEMENT
WITH BYNUM GROUP**

Pursuant to Federal Rule of Bankruptcy Procedure 9019, James A. Knauer, as chapter 11 trustee ("Trustee") for the bankruptcy estate (the "Estate") of Eastern Livestock Co., LLC ("Debtor"), by counsel, respectfully moves the Court to approve a compromise and settlement of claims between the Trustee, Bynum Ranch Company ("Bynum Ranch"), Bobby and Debby Bynum (the "Bynums"), Frank Powell ("Powell"), Johnny Mayo ("Mayo"), Bill Davis ("Davis") and Davis Quarter Horse ("Davis Quarter" and collectively with Bynum Ranch, the Bynums, Powell, Mayo and Davis, "Bynum Group"). In support of this Settlement Motion, the Trustee states as follows:

Introduction and Background

1. Certain petitioning creditors commenced the above-captioned chapter 11 case ("Chapter 11 Case") on December 6, 2010 (the "Petition Date"). The Court entered the *Order For Relief in An Involuntary Case and Order to Complete Filing* [Docket No. 110] on December 28, 2010.

2. On December 27, 2010, the Court entered the *Order Approving the Appointment of James A. Knauer as Chapter 11 Trustee* [Docket No. 102] approving the *United States Trustee's Application for an Order Approving the Appointment of James A. Knauer as Chapter 11 Trustee* [Docket No. 98] pursuant to 11 U.S.C. § 1104.

3. The Trustee filed the *Trustee's Chapter 11 Plan of Liquidation* on July 23, 2012 [Docket No. 1255] and the *First Amended Chapter 11 Plan of Liquidation* on October 26, 2012 [Docket No. 1490] ("Plan"). The Court entered an Order on December 17, 2012 [Docket No. 1644] ("Confirmation Order") confirming the Plan. Pursuant to the Plan and the Confirmation Order, general unsecured creditors of Debtor's estate could choose to "opt in" and receive a distribution from the "Fifth Third Claim Settlement Fund" (as that term is defined in the Plan). As provided in the Plan, a creditor's election to "opt-in" affects the creditor's rights to and amount of distributions under the Plan. The Plan required any creditor who opts in to waive certain claims against non-Debtor entities. Other effects of an election to opt in are more particularly described in the Plan and in the Confirmation Order.

4. The Trustee contends that prior to the Chapter 11 Case, Debtor purchased certain cattle (the "Subject Cattle") from Bynum Group pursuant to contract. The Subject Cattle were delivered to Friona Industries, L.P. ("Friona") in late October and/or early November

5. Friona interpled \$245,441.87, representing the proceeds of the Subject Cattle ("Interpled Funds"), with the Court in connection with Adversary Proceeding No. 11-59093 (the "Adversary").

6. Bynum Group filed various answers and cross-claims in the Adversary, asserting claims to the Interpled Funds.

7. Bynum Group filed proofs of claim (the "Bynum Group POCs") in the Chapter 11 Case. The Bynum Group POCs are designated on the official claims register maintained by The BMC Group, Inc. as claim nos. 435, 437, 438, 439, 440 and 441. The Bynum Group POCs assert an aggregate total claim against Debtor in the amount of \$245,441.87.

8. All members of Bynum Group executed and submitted a "Opt-In Agreements" by the deadline set forth in the Plan and Confirmation Order.

The Settlement

9. The Trustee has negotiated a settlement of Bynum Group's claims on the terms set forth in the Settlement Agreement and Mutual Release attached hereto as Exhibit A ("Settlement Agreement"). Pursuant to the Settlement Agreement, the Trustee and Bynum Group have agreed to divide the Interpled Funds, with Bynum Group receiving \$171,809.30 of the Interpled Funds (the "Settlement Payment") and the Trustee receiving the remaining \$73,632.57 of the Interpled Funds. As of Bynum Group's receipt of the Settlement Payment, the Bynum Group POCs shall be deemed to have been amended, without further action by either the Trustee or Bynum Group, to assert a consolidated unsecured claim in the total amount of \$73,632.57 (the "Bynum Group Allowed Claim"). Bynum Group shall hold an "Opt-In Claim" in the amount of the Bynum Group Allowed Claim. The parties shall release and waive all other claims against one another related to the Interpled Funds.

10. In accordance with the terms of the Plan, the \$73,632.57 of Interpled Funds received by the Trustee shall become part of the Collateral Fund (as that term is defined in the Plan).

Basis for Relief

11. Pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), this Court has authority to approve a compromise or settlement on motion made by the Trustee after notice and opportunity for a hearing.

12. Under Bankruptcy Rule 9019, a bankruptcy court should approve a proposed compromise if it is fair and equitable and in the best interests of the estate. See In re

Doctors Hosp. of Hyde Park, Inc., 474 F.3d 421, 426 (7th Cir. 2007); Depoister v. Mary M. Holloway Found, 36 F.3d 582, 586 (7th Cir. 1994); Matter of Energy Co-op, Inc. 886 F.2d 921, 927 (7th Cir. 1989).

13. The Trustee believes that the compromise and settlement reflected in the proposed Settlement Agreement is fair and equitable and in the best interests of the estate. The facts of Bynum Group's delivery of the Subject Cattle differ from many of the other cases the Trustee is now litigating. It does not appear that Eastern issued any check or other form of payment to Bynum Group for the Subject Cattle. The testimony concerning whether a contract was ever formed between Eastern and Bynum Group and whether such a contract was canceled prior to delivery of the goods is also conflicting. Moreover, continued litigation with Bynum Group and depositions of necessary fact witnesses located in at least three states would necessarily require significant additional expense with no guarantee of any recovery to the Estate.

14. If no objections to this Settlement Motion are filed, the Trustee requests that the Court enter an order approving the Settlement Agreement. If any objections to this Settlement Motion are filed, the Trustee requests that this Settlement Motion and any timely filed objection be scheduled for hearing by the Court on the earliest date that is available and convenient to the Court.

WHEREFORE, the Trustee respectfully requests that the Court enter an order approving the Settlement Agreement attached hereto as Exhibit B and grant the Trustee all other just and proper relief.

Respectfully submitted,

FAEGRE BAKER DANIELS LLP

By: /s/ Dustin R. DeNeal

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CERTIFICATE OF SERVICE

I hereby certify that on January 27, 2014, a copy of the foregoing pleading was filed electronically. Notice of this filing will be sent to the following parties through the Court's Electronic Case Filing System. Parties may access this filing through the Court's system.

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